No. 16-1432

IN THE

Supreme Court of the United States

ASHLEY SVEEN AND ANTONE SVEEN,

Petitioners,

v.

KAYE MELIN,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF FOR RESPONDENT KAYE MELIN

ROBERT J. LANGE
R.J. LANGE
LANGE LAW FIRM, P.A.
7201 W. 78th St. Suite 207
Bloomington, MN 55439

SHAY DVORETZKY
Counsel of Record
JEFFREY R. JOHNSON
ANDREW J. M. BENTZ
MATTHEW J. RUBENSTEIN
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939
sdvoretzky@jonesday.com

Counsel for Respondent

QUESTION PRESENTED

Does the application of a revocation-upon-divorce statute to a contract signed before the statute's enactment violate the Contracts Clause?

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STATEMENT

"Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them." *Allied Structural Steel Co.* v. *Spannaus*, 438 U.S. 234, 245 (1978). The Framers agreed: "no State shall ... pass any ... Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1.

Minnesota passed such a law when it decreed that divorce would erase beneficiary designations even in pre-existing contracts. Here, Mark Sveen signed a contract with Metropolitan Life Insurance Company. He owed premiums, and in turn MetLife had an obligation to pay death benefits to the person Sveen designated. Following the letter of the contract, Sveen designated his then-wife Kaye Melin. But Minnesota thought better of that choice, and reversed it upon the couple's divorce.

Minnesota thus violated the absolute prohibition on laws impairing contracts. This Court once enforced that prohibition, and it should do so again. But even under modern jurisprudence, Minnesota's law may not be retroactively applied because it substantially impaired the obligation MetLife owed to Sveen without adequate justification.

A. Development of the Contracts Clause

1. After the Revolutionary War, new Americans faced desperate economic challenges. Several states attempted to alleviate those hardships through debtor-relief legislation that threatened the integrity of pre-existing contracts and trust in the nation-

al economy. To halt this trend, the Northwest Ordinance included a provision that "no law ought ever to be made or have force in the [Northwest] territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud previously formed." Northwest Ordinance of 1787, art. II.

Later that year, at the Constitutional Convention, Rufus King proposed to add a similarly phrased "prohibition on the States to interfere in private contracts." *Journal of the Federal Convention Kept by James Madison* 620 (E.H. Scott ed., 1893). Gouverneur Morris thought the clause went "too far," but Madison disagreed; although "inconveniences might arise," "on the whole [they] would be overbalanced by the utility of it." *Id.* at 620–621. The Convention agreed that "no State shall ... pass any ... Law impairing the Obligation of Contracts." *Id.* at 729–30.

Hamilton and Madison vigorously defended the provision. Hamilton described "laws in violation of private contracts" as "atrocious breaches of moral obligation and social justice," and as "another probable source of hostility" between the states. Federalist No. 7. Madison, too, thought such laws "contrary to the first principles of the social compact and to every principle of sound legislation." Federalist No. 44.

During ratification, Federalists and Anti-Federalists alike reinforced the importance of the Contracts Clause. South Carolina Federalist Charles Pinckney described Article I, Section 10, which contains the Contracts Clause, as "the soul

of the Constitution." 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 333 (Jonathan Elliot ed., 2d ed. 1827) (Elliot). Similarly, Anti-Federalist James Winthrop proposed that it "be left to every state to make and execute its own laws, except laws impairing contracts, which shall not be made at all." James W. Ely, Jr., *The Contract Clause: A Constitutional History* 17 (2016) (quoting Agrippa Letter 16, Feb. 5, 1788, *in* The Essential Anti-Federalist (W.B. Allen & Gordon Lloyd eds., 2d ed. 2002)).

The debates also confirmed that the clause absolutely prohibited laws impairing contracts. Maryland Anti-Federalist Luther Martin opposed the clause's adoption because he disliked that it prohibited debtor-relief legislation even on "very important and urgent occasions." Luther Martin, Genuine Information, *in* 3 The Records of the Federal Convention of 1787, at 172, 214–15 (Max Farrand ed., 1937). But as Madison explained, this was precisely the point: "The sober people of America," "weary of ... fluctuating policy," enacted "thorough reform" to "banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society." Federalist No. 44

2. The judiciary embraced the Framers' categorical understanding. Ely, *supra*, at 22–23. Indeed, the first known federal decision invalidating a state law rested on the clause. *Id.* (citing *Champion & Dickason* v. *Casey* (C.C.R.I. 1792) (unreported)).

Chief Justice Marshall recognized that by including the clause in the Constitution, the people "man-

ifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed." *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 137–38 (1810). Accordingly, the Court quickly solidified the clause's broad reach. *See id.* at 138–39 (public and private contracts); *Trustees of Dartmouth College* v. *Woodward*, 17 U.S. (4 Wheat.) 518 (1819) (state-granted corporate charters). It also struck down a raft of state legislation. For example, while upholding states' power to pass insolvency laws before there was a federal bankruptcy system, this Court held that the Contracts Clause prohibited applying such laws to pre-existing contracts. *E.g.*, *Sturges* v. *Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819).

Although absolute in its field, the Contracts Clause did not displace every law that might touch contracts. States remained free to pass prospective laws, *see Ogden* v. *Saunders*, 25 U.S. (12 Wheat.) 213 (1827), laws that affected remedies but not obligations, *Sturges*, 17 U.S. (4 Wheat.) at 200, and laws that exercised the state's traditional police power, Thomas W. Merrill, *Public Contracts, Private Contracts, and the Transformation of the Constitutional Order*, 37 Case W. Res. L. Rev. 597, 605 (1987). That latter limitation was quite narrow. "As then conceived," the police power "was not a comprehensive welfare power." *Chicago Bd. of Realtors, Inc.* v. *Chicago*, 819 F.2d 732, 744 (7th Cir. 1987) (opinion of Posner and Easterbrook, JJ.). It was instead the state's core power to protect "the public health, the public morals, or the public safety," *New Orleans Gas-Light Co.* v. *Louisiana Light & Heat Producing & Mfg. Co.*, 115 U.S. 650, 672 (1885),

which "rest[ed] upon the fundamental principle that every one shall so use his own as not to wrong and injure another," *Nw. Fertilizing Co.* v. *Village of Hyde Park*, 97 U.S. 659, 667 (1878). Because states could not contract away this power and private parties could not exempt themselves from it, attempts to do so were void from the start, leaving no contractual obligation to impair. *Stone* v. *Mississippi*, 101 U.S. 814, 819 (1879).

Where obligations *were* impaired, however, the clause's protection was absolute. *Planters' Bank* v. *Sharp* illustrates the Court's approach. It framed the question as "whether an act of the legislature ... impaired *the obligation of any contract* which the State or others had previously entered into." 47 U.S. (6 How.) 301, 318 (1848). "If it did," this Court stated flatly, "the clause in the Constitution of the United States, expressly prohibiting a State from passing any such law, has been violated." *Id.* Because the law at issue retroactively prohibited banks from discounting certain instruments or suing to collect on them, the law violated the clause. *Id.* at 326. End of story. *See also, e.g.*, *New Jersey* v. *Wilson*, 11 U.S. (7 Cranch) 164 (1812) (law repealing tax exemption); *Bronson* v. *Kinzie*, 42 U.S. (1 How.) 311 (1843) (mortgage moratorium law); *State Bank of Ohio* v. *Knoop*, 57 U.S. (16 How.) 369 (1854) (law requiring higher taxes than in charter).

State courts, too, voided a variety of laws. The Supreme Court of Errors of Connecticut, for example, enjoined the use of a bridge because a previous charter gave another company exclusive rights to build one. *Enfield Toll Bridge Co.* v. *Hartford & New-Haven R.R. Co.*, 17 Conn. 40 (1845). And in

invalidating a law revoking a tax exemption guaranteed by a charter, the Arkansas Supreme Court described the clause as "among the wisest" in the Constitution because "without it private rights would ... be liable to invasion by the enactment of laws consequent upon fluctuating policy, strong passions, and sudden changes." *State* v. *Crittenden Cty. Court*, 19 Ark. 360, 364 (1858).

After the Civil War, this Court reaffirmed that "any impairment of the obligation of a contract"—"the degree ... is immaterial"—was forbidden. *Walker* v. *Whitehead*, 83 U.S. (16 Wall.) 314, 318 (1872). And it continued striking down laws that impaired contracts, even contracts purchased with Confederate money. *E.g.*, *Delmas* v. *Merchants' Mut. Ins. Co.*, 81 U.S. (14 Wall.) 661 (1872); *see also, e.g.*, *Gunn* v. *Barry*, 82 U.S. (15 Wall.) 610 (1873) (law increasing homestead exemption).

3. Then came *Blaisdell*. Minnesota enacted a mortgage moratorium similar to the debtor-relief legislation that had prompted the Framers to include the Contracts Clause in the first place. The Court nonetheless upheld Minnesota's law. *Home Bldg. & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934).

The Court's reasoning was remarkable. The Court declared that the "great clauses of the Constitution" could no longer "be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them." *Id.* at 443; *see also id.* at 427 (eschewing the Convention debates as being "of little aid"). It downplayed the significance of the clause's appearing "in the same section with other ... prohibitions,"

such as the Ex Post Facto Clause. *Id.* at 427. And it accorded scant weight to "the occasion and general purpose of the clause." *Id.* at 428.

Instead, the Court held that the "general" clause "afford[ed] a broad outline," requiring the Court to "fill in the details." *Id.* at 426. In doing so, it relied on "a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare." *Id.* at 442. It concluded that "an emergency existed in Minnesota which furnished a proper occasion for the exercise of the reserved power of the state to protect the vital interests of the community." *Id.* at 444. Because the law "was addressed to a legitimate end," "justified by the emergency," seemed "reasonable," and was "temporary," it was upheld. *Id.* at 444–47.

Justice Sutherland and three others rejected the Court's new approach. "If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned." *Id.* at 483 (Sutherland, J., dissenting). Forecasting events to come, he warned that the Minnesota statute was "of trivial significance compared with the far more serious and dangerous inroads upon the limitations of the Constitution which are almost certain to ensue." *Id.* at 448.

For a time, *Blaisdell*'s limits were important prerequisites for allowing contractual impairments. *See, e.g.*, *W.B. Worthen Co.* v. *Thomas*, 292 U.S. 426, 434 (1934) (invalidating retroactive exemption of life-insurance proceeds from attachment because the law "contain[ed] no limitations as to time,

amount, circumstances, or need"). But *Blaisdell*'s makeshift lines did not hold. In *El Paso* v. *Simmons*, the Court ignored *Worthen* and described *Blaisdell* as "a comprehensive restatement of the principles underlying the application of the Contract Clause." 379 U.S. 497, 508 (1965). It further indicated that courts must "respect the wide discretion on the part of the legislature in determining what is and what is not necessary" when impairing contracts. *Id.* at 508–09. Justice Sutherland proved prescient.

4. The modern Court has twice attempted to breathe life back into the clause. In *U.S. Trust Co. of New York* v. *New Jersey*, the Court observed that the Contracts Clause "remains a part of our written Constitution"; courts therefore "must attempt to apply" it by scrutinizing whether laws that "regulate existing contractual relationships ... serve a legitimate public purpose," with "reasonable conditions ... of a character appropriate to the public purpose justifying [their] adoption." 431 U.S. 1, 16, 22 (1977). In applying that test to void a New Jersey law impairing public contracts, the Court explained that "a State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives," nor is it "free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." *Id.* at 30–31.

A year later, the Court invalidated a Minnesota law that imposed increased pension liability on companies that terminated a pension plan or closed a Minnesota plant. *Allied Structural*, 438 U.S. at 238. The Court explained, "if the Contract Clause is to retain any meaning at all, ... it must be under-

stood to impose *some* limits upon the power of a State to abridge existing contractual relationships." *Id.* at 242. The Court further explained that the pension law before it failed to meet *Blaisdell*'s conditions and "was not even purportedly enacted to deal with a broad, generalized economic or social problem." *Id.* at 250.

5. Nonetheless, the most recent cases have continued the descent inaugurated by *Blaisdell*. *U.S. Trust* limited its attempted reinvigoration by according private contracts less protection than public ones: where private contracts are at stake, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure," but "complete deference ... is not appropriate" where public contracts are involved "because the State's self-interest is at stake." 431 U.S. at 23, 26.

In this vein, *Energy Reserves Group, Inc.* v. *Kansas Power & Light Co.* upheld a statute abrogating contractual provisions between natural gas suppliers and a utility company to protect consumers from rising gas prices. In doing so, the Court gave "particular[] ... defer[ence]" to the legislature. 459 U.S. 400, 411–12 (1983). Other cases followed suit. *See Exxon Corp.* v. *Eagerton*, 462 U.S. 176, 191–92 (1983) (upholding law that prohibited oil and gas producers from shifting tax increases to their purchasers regardless of contractual provisions because it "protect[ed] consumers from excessive prices"); *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 505–06 (1987) (upholding statute invalidating contractual waivers of the obligation to leave coal beneath certain structures because the

Court "refuse[d] to second-guess" the legislature's judgment of "the most appropriate ways of dealing with the problem").

Blaisdell took "us beyond the fixed and secure boundaries of the fundamental law into a precarious fringe of extraconstitutional territory in which no real boundaries exist." *Worthen*, 292 U.S. at 435 (Sutherland, J., concurring). Whatever boundaries remained have continued to erode, leaving a "defanged" Contracts Clause, *Chicago Bd. of Realtors*, 819 F.2d at 744 (opinion of Posner and Easterbrook, JJ.), that has largely "fallen into desuetude," Douglas W. Kmiec & John O. McGinnis, *The Contract Clause: A Return to the Original Understanding*, 14 Hastings Const. L.Q. 525, 526 (1987).

B. Revocation-upon-Divorce Laws

1. This case involves the collision of the Contracts Clause and revocation-upon-divorce statutes. Historically, divorce had no automatic effect on life-insurance contracts; if "an insured d[id] not change the beneficiary of his ... life insurance policy" after divorcing, "the ex-spouse beneficiary [wa]s entitled to the proceeds" upon the insured's death. *Larsen* v. *Nw. Nat'l Life Ins. Co.*, 463 N.W.2d 777, 779 (Minn. Ct. App. 1990).

That rule contrasts with states' treatment of wills, where divorce generally revokes such bequests. *See* Alan S. Wilmit, Note, *Applying the Doctrine of Revocation by Divorce to Life Insurance Policies*, 73 Cornell L. Rev. 653, 653 n.2 (1988). Courts have rejected expanding that rule to nonprobate assets such as life insurance, ACTEC Amicus Br. 9,

however, because wills and life insurance do fundamentally different things.

Life insurance "serves the essential economic and social functions of allowing ... [a] family ... to mitigate the risk of a loss resulting from premature death" by replacing lost income on which a beneficiary once relied. 8 Jeffrey E. Thomas, New Appleman on Insurance § 81.02[1]. Often, it is "the only means by which the average family can be supported in the event of the untimely death of a breadwinner." *Feminist Women's Health Ctr.* v. *Codispoti*, 821 P.2d 1198, 1201 (Wash. 1991) (en banc).

Wills—the "legal declaration of a man's intentions which he wills to be performed after his death," 2 William Blackstone Commentaries *499—serve a broader purpose. They too provide financial security, but they also bequeath property with mostly sentimental value, designate who will care for the testator's children, and spell out what happens to man's best friend.

2. It thus makes sense that divorce should affect wills and life insurance differently. A divorced spouse likely does not want his former spouse receiving grandma's quilt or administering his estate. But when it comes to life insurance, "divorce does not in all cases and automatically spell the end of interest in or even concern for one former spouse by the other," *In re Adams' Estate*, 288 A.2d 514, 517 (Pa. 1972), and "there are often valid reasons why an insured would want a former spouse to receive his insurance policy proceeds," *Hughes* v. *Sholl*, 900 S.W.2d 606, 607 (Ky. 1995).

Most obviously, "on separation or divorce, normally both spouses wish to assure their minor children's future," and "insurance provides a relatively painless manner to achieve this objective." *Franklin Life Ins. Co.* v. *Kitchens*, 57 Cal. Rptr. 652, 657 (Ct. App. 1967). By maintaining a former spouse—often one with primary custody—as the beneficiary, a policyholder ensures that the couple's children will continue to receive needed financial support after his or her death. *E.g.*, *Whirlpool Corp.* v. *Ritter*, 929 F.2d 1318, 1323 (8th Cir. 1991).

Similarly, many divorced couples use life-insurance proceeds to "assure[] that the supported spouse will not be left without means for support ... following the death of the obligor spouse." *Tintocalis* v. *Tintocalis*, 20 Cal. App. 4th 1590, 1594 (1993). Again, this reflects the obvious truth that divorce is seldom a clean economic break. No matter the parties' current feelings for each other, one often remains financially dependent on the other, and life insurance ensures that promises of continued support will be honored despite the insured's death.

Many couples also use life insurance as an investment and want both spouses to get their fair share of it. *See* David F. Babbel & Oliver D. Hahl, *Buy Term and Invest the Difference Revisited*, 69 J. Fin. Serv. Profs. 92, 99–101 (2015). Still others may divorce but continue to "live together and to function as a couple." *American Gen. Life Ins. Co.* v. *Jenson*, 2012 WL 848158, at *2 (D.S.D. Mar. 12, 2012). For these and myriad other reasons, many,

many policyholders maintain life-insurance coverage to benefit an ex-spouse.[1]

In keeping with these reasons, the longstanding non-revocation rule remains good law in almost half the states. Pet. Br. 8–9 & nn.1–2. The federal government, too, treats divorce itself as a non-event for policies governed by ERISA or the Federal Employees' Group Life Insurance Act of 1954 (FEGLIA). Indeed, those statutes preempt state revocation-upon-divorce laws. *Hillman* v. *Maretta*, 569 U.S. 483 (2013); *Egelhoff* v. *Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001). The United States has explained that revocation-upon-divorce statutes often do not "effectuate[] an insured's 'true' intent" because a policyholder "might want his ex-spouse to receive insurance proceeds for a number of reasons—out of a sense of obligation, remorse, or continuing affection, or to help care for children of the marriage that remain in the ex-spouse's custody." Brief for the United States as Amicus Curiae, *Hillman*, 2013 WL 1326956, at *28.

C. Facts and Procedural History

In December 1997, Mark Sveen and Respondent Kaye Melin married. Pet. App. 9a. In April 1998, Sveen designated Melin as the primary beneficiary of a life-insurance policy he bought from MetLife. Pet. App. 9a–10a. He designated his children from a previous marriage, Petitioners Ashley and Antone Sveen, as contingent beneficiaries. Pet. App. 10a.

[1] *E.g.*, *Sutherlin* v. *Sutherlin*, 802 S.E.2d 204, 207 (Ga. 2017); *Davis* v. *Davis*, 489 S.W.3d 225, 226 (Ky. 2016); *Estate of Pierce*, 394 P.3d 316, 319 (Okla. Civ. App. 2016) (prenuptial agreement).

Sveen also maintained other life-insurance policies designating his children as primary beneficiaries, Pet. App. 2a, and Melin purchased a policy and designated Sveen as the primary beneficiary, Dist. Ct. Dkt. #46 ¶ 3.

When Sveen bought his policy and designated Melin, Minnesota law specified that an ex-spouse beneficiary would receive the proceeds upon the insured's death unless the insured had changed the designation. *See Larsen*, 463 N.W.2d at 779. Moreover, Eighth Circuit precedent precluded retroactive application of revocation-upon-divorce statutes. *Whirlpool*, 929 F.2d at 1322.

In 2002, Minnesota enacted its revocation-upon-divorce statute. Minn. Stat. § 524.2-804. Sveen and Melin divorced in 2007, and Sveen died in 2011. Pet. App. 2a–3a. Sveen never altered his designation of Melin as the primary beneficiary before his death, Pet. App. 2a, nor did Melin change hers until after Sveen's death; as she contended below, they had orally agreed to leave the designations in place, Dist. Ct. Dkt. #46 ¶¶ 3, 10, 15.

MetLife filed an interpleader action, and Melin and the Sveen children filed competing claims. Pet. App. 10a. The District Court applied Minnesota's statute and awarded the proceeds to the Sveens. Pet. App. 16a. The Eighth Circuit reversed. It explained that applying the statute would impair the obligation MetLife owed to Sveen by "disrupting [his] expectations" and "right to rely on the law ... as it existed when the contracts were made." Pet. App. 5a–6a.

SUMMARY OF ARGUMENT

I. By its terms, the Contracts Clause is absolute: it forbids *any* state law that impairs the obligations of contracts. Moreover, the same purposes that animated the clause in 1787—ensuring people can rely on their contracts, protecting against laws benefiting special interests, and promoting political stability—remain relevant today. Under current doctrine, however, courts regularly uphold laws that undermine this crucial protection.

The Court should restore the plain meaning and the original understanding of the clause. Under that standard, this case is straightforward. MetLife owed a contractual obligation to Sveen, yet Minnesota's law vitiated that obligation. Under the Framers' absolute Contracts Clause, the case ends there.

II. Even if the Court does not restore the original meaning of the Contracts Clause, it should at least treat public and private contracts equally by forbidding the impairment of private contracts when a "more moderate course would serve [the state's] purposes equally well." *U.S. Trust*, 431 U.S. at 30–31. The text does not distinguish between public and private contracts, and history shows that, if anything, private contracts deserve *greater* protection.

This Court has justified its disparate treatment on the grounds that laws impairing public contracts implicate the state's self-interest. But states are just as self-interested when they impair private contracts. For example, states often favor in-state interests over out-of-state ones, or the interests of politically powerful groups over unpopular ones.

If private impairments are scrutinized as thoroughly as public impairments, this case is again straightforward. Minnesota could have achieved its goal—protecting inattentive divorcés who forget to remove their former spouse as a beneficiary—in a host of less intrusive ways. It could, for example, do what Virginia does: require divorce decrees to prominently warn couples that the divorce may automatically revoke beneficiary designations. Or it could require the judge to confirm that divorcing couples have reviewed their policies. These approaches serve Minnesota's purported interest of realizing the policyholder's intent, but do not impair contracts.

III. Even under the Court's current approach, Minnesota's law is unconstitutional.

A. The statute substantially impairs the contractual obligation MetLife owed Sveen. Providing for the designated beneficiary is the whole point of a life-insurance policy. By changing this key term, Minnesota's law severely impaired Sveen's contract.

Petitioners' contrary arguments are meritless. Petitioners' novel claim that laws regarding divorce do not even implicate the Contracts Clause cannot be right; otherwise, states could void mortgages of divorcing couples or overrule prenuptial agreements upon divorce. This Court has never suggested states have such carte blanche to impair contracts.

Petitioners next argue that revocation-upon-divorce laws do not impair contracts because they affect only the "donative" part of a life-insurance agreement, not the "contractual" part. There is no such distinction. An insurance contract payable to a third party is a classic third-party beneficiary con-

tract, subject to all the normal rules of contracts. That is why a breach-of-contract claim is available against an insurance company that pays the wrong person. Indeed, if Petitioners were right, the Contracts Clause would not stop a state from making *itself* the beneficiary of all life-insurance contracts.

Finally, Petitioners claim that revocation-upon-divorce statutes are merely default rules, and that the "statutory requirement of filing a document does not unconstitutionally impair contractual obligations." Pet. Br. 47. Again, this sweeps too far. If true, it would allow states to alter *irrevocable* beneficiary designations for failure to file a form, without even triggering Contracts Clause scrutiny. Moreover, this categorical rule finds no basis in this Court's cases, which have turned on context in assessing whether such a requirement violates the clause. Here, that context shows why revocation-upon-divorce laws impose a substantial impairment. These laws are *premised* on the idea that policyholders don't think about their beneficiary designations. If so, the legislature can't expect those same individuals to know that the law has changed and exercise their theoretical right to re-designate their former beneficiary.

B. Minnesota's law does not further a significant and legitimate purpose. It does not attempt to remedy a broad, well-documented social problem in a way that merely incidentally affects contractual obligations. Instead, it specifically rewrites a small group of contracts out of a desire to help policyholders who, it is assumed, would have wanted to change their beneficiary designations. But that assumption is often wrong, and as a result significantly impairs the contracts of those who wish to keep

their ex-spouse as beneficiary. Given the cost Minnesota's law imposes on such policyholders and the absence of any real evidence of offsetting benefits, Minnesota's law does not serve a significant and legitimate public interest.

C. Finally, Minnesota's law is not an appropriate means of achieving Minnesota's purposes. Many policyholders wish to leave their former spouse as their beneficiary, which is why almost half of the states and the federal government do not automatically revoke beneficiary designations upon divorce. Minnesota, however, revokes these designations even where the law at the time they signed their contract provided otherwise. There is no reason to harm these policyholders—who are presumed not to be paying attention—simply to benefit others who might have wished to change their designation. Indeed, the plethora of ways Minnesota could have helped any such individual confirms that retroactively revoking beneficiary designations is not reasonable.

ARGUMENT

I. Retroactively Applying Minnesota's Statute Contravenes the Contracts Clause's Original Meaning

The Contracts Clause means what it says: states may not pass laws impairing the obligations of contracts. This Court should restore that original meaning, not only because the Constitution's text and structure require it, but also to protect the important interests the clause once shielded. Because Minnesota's statute impairs the obligation MetLife

owed to Sveen, it violates the Contracts Clause as originally, and properly, understood.

1. The Contracts Clause is just eleven words long: "No State shall ... pass any ... Law impairing the Obligation of Contracts." U.S. Const., art. I, § 10, cl. 1. Yet "it would seem difficult to substitute words which are more intelligible, or less liable to misconstruction," than its brief categorical prohibition. *Sturges*, 17 U.S. (4 Wheat.) at 197. As this Court has repeatedly recognized, "the language of the Contract Clause appears unambiguously absolute," *Allied Structural*, 438 U.S. at 240, and "appears literally to proscribe 'any' impairment," *U.S. Trust*, 431 U.S. at 20. This straightforward language creates a "plain guarantee," not a conditional protection that courts may "balanc[e] away." *El Paso*, 379 U.S. at 517 (Black, J., dissenting).

The Constitution's structure reinforces the point. Section 10's first clause provides:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

These are robust prohibitions, important enough to be called "the soul of the Constitution." 4 Elliot, *supra*, at 333. To this day, the Constitution forbids all ex post facto laws, bills of attainder, and titles of nobility, no matter how "reasonable" they might be. *See, e.g.*, *Stogner* v. *California*, 539 U.S. 607, 611

(2003) (Ex Post Facto Clause); *United States* v. *Lovett*, 328 U.S. 303, 315 (1946) (Bill of Attainder Clause). The Contracts Clause's presence in this list confirms its own absolute nature.

The presence of express exceptions to limitations on state power in section 10's second and third clauses highlights the absence of any exceptions to the Contracts Clause. For example, states may lay imposts where "absolutely necessary" or may "engage in war" if "actually invaded." U.S. Const. art. I, § 10, cls. 2–3. Unlike section 10's first clause, moreover, its second and third clauses provide blanket permission for actions taken with "the Consent of Congress." *Id.* The Framers thus knew how to craft exceptions to limitations on state power. The Contracts Clause has none.

These textual points make clear what *Blaisdell* all but admitted: modern jurisprudence "has rewritten the contract clause by inserting the word 'unreasonably' before 'impairing' and adopting a radically undemanding definition of 'reasonableness.'" *Chicago Bd. of Realtors*, 819 F.2d at 743 (opinion of Posner and Easterbrook, JJ.). Rather than "confine[]" itself "to the interpretation which the framers ... would have placed upon" the clause, or give effect to its "associat[ion] in the same section with other and more specific prohibitions," the Court struck its own "rational compromise between individual rights and public welfare" in light of its "growing appreciation of public needs." *Blaisdell*, 290 U.S. at 427, 442–443. The Constitution's words deserve better.

2. Recognizing the Contracts Clause's absolute nature is consistent with its purposes. The Contracts Clause was designed to protect the rule of law, minimalize factionalism, and promote political stability. Those reasons remain as important today as in 1787, yet current doctrine leads courts to bless laws that exhibit the very dangers the clause was supposed to prevent.

Consider first the rule of law. To obey the law, people must know what it is, which requires that it be "general, prospective, and relatively stable." Kmiec & McGinnis, *supra*, 14 Hastings Const. L.Q. at 527. As Justice Story reasoned, "retrospective laws are, indeed, generally unjust." 2 J. Story, Commentaries of the Constitution § 1398 (5th ed. 1891). Early decisions interpreting the Contracts Clause thus consistently struck down laws that undermined the stability of pre-existing agreements—public or private—because laws must be stable to be known. *Supra* 3–6. Indeed, Justice Johnson went so far as to deem this "a principle which will impose laws even on the deity." *Fletcher*, 10 U.S. (6 Cranch) at 143 (Johnson, J., concurring).

The rewritten Contracts Clause's balancing tests do little to help people know whether their contracts will be enforced. Experience in the courts of appeals confirms as much. The Third Circuit, for example, upheld a law granting senior citizens the right to continue living in an apartment for *forty years*, with rent controls, after the unit's conversion to a condominium, despite pre-existing leases. *Troy Ltd.* v. *Renna*, 727 F.2d 287, 290, 297–98 (3d Cir. 1984). Notwithstanding the obvious importance of predictable rules in real estate markets, the court conclud-

ed that the law did not *substantially* impair contracts because the aged tenants were unlikely to live out the forty years.

Apartment owners aren't the only ones to have the contractual rug pulled out from under them. For instance, Chrysler's contracts forbade its dealers from changing location without Chrysler's permission. Years later, Wisconsin allowed dealers to "challenge a manufacturer's refusal to permit him to move his dealership" before a state agency. *Chrysler Corp.* v. *Kolosso Auto Sales, Inc.*, 148 F.3d 892, 893, 897 (7th Cir. 1998). The court ruled that change insubstantial because it thought the parties could have foreseen it. Governments have also unilaterally modified public contracts—including those covering police officers, firefighters, and teachers—despite those contracts' supposedly greater protection. *See, e.g., United Auto., Aerospace, Agric. Implement Workers of Am. Int'l Union* v. *Fortuno*, 633 F.3d 37, 46–47 (1st Cir. 2011); *Buffalo Teachers Fed'n* v. *Tobe*, 464 F.3d 362, 371 (2d Cir. 2006).

Worse, courts frequently divide on whether similar laws violate the ersatz Contracts Clause, making it even more difficult to know one's rights. Take just the examples above: other courts have struck down laws altering landlord-tenant contracts, *e.g., Anthony* v. *Kualoa Ranch, Inc.*, 736 P.2d 55, 63 (Haw. 1987) (requiring landlords to pay tenants for improvements), voided laws altering franchise contracts, *e.g., Equip. Mfrs. Inst.* v. *Janklow*, 300 F.3d 842, 862 (8th Cir. 2002), and invalidated wage freezes for state employees, *e.g., Univ. of Hawaii Prof'l Assembly* v. *Cayetano*, 183 F.3d 1096, 1107 (9th Cir.

1999). This hardly inspires confidence in the rule of law.

Second, the Contracts Clause was designed to prevent the singling out of disfavored groups, including creditors. Because the Framers recognized that state legislatures were highly susceptible to such pressures, *see* Federalist No. 10 (Madison), they enacted the Contracts Clause to prevent state-level majorities from "redistributing resources between parties to a contract by voiding obligations" in favor of the group du jour. Kmiec & McGinnis, *supra*, 14 Hastings Const. L. Q. at 529.

Once again, however, the modern Contracts Clause allows just that. The examples just discussed demonstrate this phenomenon. Additional examples abound. The Seventh Circuit, for instance, upheld a law that, among other things, required landlords to accept subleases and shifted the responsibility for repairs from the tenant to the landlord. *Chicago Bd. of Realtors,* 819 F.2d at 737. And landlords aren't the only targets of this redistributivist impulse. Berkeley required employers operating on land leased from the city to pay a "living wage," *RUI One Corp.* v. *Berkeley*, 371 F.3d 1137, 1143 (9th Cir. 2004), effectively inserting a new term requiring the lessee to pay higher wages, *id.* at 1158 (Bybee, J., dissenting). The Ninth Circuit upheld that law even though it applied retroactively and targeted a very small number of employers. *Id.* at 1150–54 (majority opinion). The Supreme Court of Montana upheld an increased homestead exemption to prior debts, despite previously holding precisely the opposite. *Neel* v. *First Fed. Sav. & Loan Ass'n*, 675 P.2d 96, 103–06 (Mont. 1984). And the Oklahoma Supreme Court

upheld the so-called Sweetheart Gas Act, which gave a share of gas revenues to each co-owner of the property, no matter what their royalty clauses said about the matter. *Seal* v. *Corp. Comm'n*, 725 P.2d 278, 292 (Okla. 1986).

While courts upheld these laws under different prongs of the current test, each is an example of a legislature benefiting a favored class. Each would have been struck down under the original understanding for that very reason. *E.g.*, *Gunn*, 82 U.S. (15 Wall.) at 622–23 (law increasing homestead exemption); *Champion & Dickason* (unreported) (law extending the time for a politically connected debtor to pay his debts). Modern doctrine thus does little to prevent the sort of legislative capture the clause was designed to guard against.

Third, the Contracts Clause protected against abrupt changes in policy; in many ways, only once existing contracts had been completed could a legislature effect policy changes. As Madison wrote, "stability in government is essential to national character," and it is "among the chief blessings of civil society." Federalist No. 37.

The watered-down Contracts Clause provides no emergency brake. "Even big, totally unpredictable impairments ... can survive challenge ... if they are responsive to economic emergencies." *Chrysler*, 148 F.3d at 896; *see, e.g.*, *Borman, LLC* v. *18718 Borman, LLC*, 777 F.3d 816, 820 (6th Cir. 2015) (upholding law that "render[ed] solvency covenants in nonrecourse loans unenforceable" in light of the 2008 recession). Indeed, significant impairments often survive even when they serve "considerably less exigent

needs." *Chrysler*, 148 F.3d at 896. For example, budget shortfalls have often justified freezing wages, and the desire to level the playing field between renters and landlords has often led to severely impaired leases.

The Court should return to the original understanding of the Contracts Clause. That interpretation best reflects the Constitution's text and structure. And the same concerns that animated the clause at the Founding exist today. Whenever a state law impairs the obligation of contract, it must be set aside.

3. *Stare decisis* does not stand in the way of correcting *Blaisdell*'s errors. To begin, *stare decisis* is "not an inexorable command," and it is "at its weakest" in constitutional cases. *Agostini* v. *Felton*, 521 U.S. 203, 235 (1997).

There are ample reasons to jettison *Blaisdell*. For one, as demonstrated above, *Blaisdell* was not well reasoned when decided. It also has not proven workable since, because parties to contracts cannot predict whether a state will attempt to override their agreement or whether a court will uphold the law. *Supra* 21–23. And there's no reason to think legislatures are going to restrain themselves in the future. You don't leave the henhouse walls down in hopes that the foxes will let the chickens be.

Finally, it would be more than ironic to keep *Blaisdell* alive on reliance grounds. The absolutist understanding fosters certainty by "giving permanence and security to contracts." *Dartmouth College*, 17 U.S. (4 Wheat.) at 647–48. *Blaisdell*'s squishy approach, by contrast, leaves everyone at

sea. It would be passing strange to entrench precedent that undermines the integrity of every contract because, somehow, someone somewhere might have relied upon modern doctrine's ambiguity. In this same vein, it does not matter that "legislatures may have enacted" laws impairing contracts "believing those [laws] were constitutional." *Citizens United* v. *FEC*, 558 U.S. 310, 365 (2010). Those laws would still apply prospectively—where they do not upset the parties' expectations—and the mere existence of imperiled legislation cannot outweigh every other consideration. If it could, "legislative acts could prevent [the Court] from overruling [its] own precedents, thereby interfering with [its] duty to say what the law is." *Id.*

4. The true Contracts Clause requires striking down Minnesota's law as applied. There is no doubt the law impairs the contractual obligation MetLife owed to Sveen. The contract was simple, but important. Sveen was required to pay MetLife premiums; in exchange, MetLife was obligated to pay death benefits to the person Sveen chose. Sveen followed the steps laid out in the contract and chose his then-wife Melin. Minnesota cannot change that designation without impairing that contract. *See infra* 33–36. Whether or not MetLife cares who gets the check, Sveen certainly did, as all policyholders do; after all, the whole point of a life-insurance contract is that the company will pay the beneficiary of the policyholder's choice.

Under the proper understanding of the Contracts Clause, that should end this case. The Framers' absolute bar means Minnesota may not impair

Sveen's life-insurance contract by shifting the legal background in this fashion, no matter its reasons.

II. Laws Impairing Private and Public Contracts Should Be Treated Alike

Even if the Court does not return to the clause's original meaning, this case calls for a more modest step: putting public and private contracts on equal footing. As with public contracts, a state should "not [be] completely free to consider impairing the obligations of [private] contracts on a par with other policy alternatives." *U.S. Trust*, 431 U.S. at 30–31. Instead, it should take the "more moderate course" that avoids impairing contracts while still serving the state's "purposes equally well." *Id.* at 31.

1. Even *Blaisdell* acknowledged that "whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power." 290 U.S. at 439. That principle requires that a state not only establish a legitimate public purpose, but also pursue it by means that avoid or at least mitigate the impairment of contracts. The Court already uses this approach for public contracts, where states are not "free to consider impairing" their obligations when more moderate steps would achieve their goals. *U.S. Trust*, 431 U.S. at 30–31.

This principle often prevents the impairment of public contracts. For example, courts routinely strike down pay freezes for public employees because "although perhaps politically more difficult, numerous other alternatives ... would more effectively and equitably raise revenues," including increasing taxes and tightening the budget. *Cayetano*,

183 F.3d at 1107. Therefore, to renege on its financial commitment, the state "must demonstrate that the funds are available from no other possible reasonable source." *Chiles* v. *United Faculty of Florida*, 615 So. 2d 671, 673 (Fla. 1993) (applying *U.S. Trust*'s principles under the state constitution). Even if other choices are not "as politically feasible," "the State cannot resort to contract violations to solve its financial problems." *Op. of the Justices (Furlough)*, 609 A.2d 1204, 1211 (N.H. 1992).

When it comes to "economic and social regulation" that impairs private contracts, however, courts today "defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves*, 459 U.S. at 412–13; *see, e.g.*, *Keystone Bituminous Coal Ass'n*, 480 U.S. at 506 ("refus[ing] to second-guess" the legislature).

This level of deference is unwarranted. Nothing about the Contracts Clause suggests that impairments of private contracts should be reviewed more leniently. The text draws no distinction between public and private agreements. And history suggests that, to the extent different treatment is warranted, private contracts merit *greater* protection. The Framers included the clause's strong prohibition against the backdrop of debtor-relief laws that impaired private contracts. Of particular concern were laws that threatened the development of a national economy by disfavoring out-of-state interests. *See, e.g.*, Federalist No. 7 (Hamilton). In other words, the Framers drafted the Contracts Clause precisely *because* they did not trust state legislatures to exercise "legislative judgment as to the necessity and reasonableness of a particular measure"

even—indeed, especially—when private contacts were at stake.

"For roughly the first 150 years of our constitutional history," courts followed the Framers' lead: "the contract clause was viewed as imposing greater restraints on impairments of private rather than public contracts." Merrill, *supra*, 37 Case W. Res. L. Rev. at 599. For instance, in contrast to private contracts, courts construed public contracts strictly in favor of the government, thereby giving legislatures greater freedom from their predecessors' prior choices. *E.g.*, *Charles River Bridge* v. *Warren Bridge*, 36 U.S. (11 Pet.) 420 (1837).

Contemporary doctrine, however, has turned the clause on its head, and for no good reason. *U.S. Trust* posits that a stronger check on impairments of public contracts is necessary "because the State's self-interest is at stake." 431 U.S. at 26. But the state must have a "legitimate public purpose" *whenever* it substantially impairs contractual obligations, public or private. *Id.* at 22. True, a state may be "self-interested" when it seeks to break its own promises. But it is just as "self-interested" when it pursues a "legitimate public purpose" by permitting others to break theirs.

This is most obvious where, as Hamilton feared, states impair private contractual obligations to disfavor out-of-state interests. For example, states have enacted laws that retroactively altered contracts to benefit in-state distributors at the expense of out-of-state manufacturers. Nowadays, such laws are routinely upheld against Contracts Clause challenge. *E.g.*, *All. of Auto. Mfrs.* v. *Gwadosky*, 430

F.3d 30, 42 (1st Cir. 2005); *Chrysler*, 148 F.3d 892; *Schieffelin & Co.* v. *Dep't of Liquor Control*, 479 A.2d 1191, 1197–98, 1202 (Conn. 1984) (law was "quite frankly" designed to benefit Connecticut businesses against "out-of-state manufacturer[s]"). The "self-interest" in favoring in-state constituents is just as pernicious as the self-interest that worried the *U.S. Trust* Court.

Similar worries arise within states as well. No less than Congress, a state legislature "is a 'they,' not an 'it.'" Kenneth A. Shepsle, *Congress Is a "They" Not an "It": Legislative Intent as Oxymoron*, 12 Int'l Rev. L. & Econ. 239, 244 (1992). Legislators have "disparate interests and represent[] persons having disparate interests." Merrill, *supra*, 37 Case W. Res. L. Rev. at 616. Thus, state legislatures—that is, legislators wielding majority power—can be expected to impair contracts to benefit one group over another. Here, too, examples abound. Judges Posner and Easterbrook explained how a law "rewrit[ing] present ... leases of apartments in Chicago"—by requiring interest on security deposits, insisting that the deposits be held in Illinois banks, and so on—was "an unedifying example of class legislation and economic protectionism rolled into one." *Chicago Bd. of Realtors*, 819 F.2d at 741–742 (opinion of Posner and Easterbrook, JJ.); *see also Borman*, 777 F.3d at 820.

In short, it makes no sense to review laws impairing private obligations more leniently: the text admits no such distinction, history cuts in precisely the opposite direction, and purpose demands equal scrutiny for both. Thus, where an "evident and more moderate course" than impairing private contracts would serve states' "purposes equally well,"

U.S. Trust, 431 U.S. at 31, this Court should demand states take that course instead.

2. When it comes to revocation-upon-divorce statutes, there are more moderate courses that would serve states' purposes equally well. In other words, "the means chosen by [Minnesota] are, quite obviously, in no way 'necessary' to the achievement of the stated goals." *Ass'n of Surrogates & Supreme Court Reporters Within City of New York* v. *New York*, 940 F.2d 766, 773 (2d Cir. 1991).

Petitioners justify Minnesota's law as a protection for inattentive divorcés—those who want to change their beneficiary after a divorce but fail to realize they need to do so. Pet. Br. 56–57. But for the reasons discussed, it is "certainly not a universal truth" that divorcés *want* to change their designations, *Whirlpool*, 929 F.2d at 1323; many intentionally leave them as-is, *supra* 11–13, and others would do so if they considered the question. These categorical laws thus benefit one set of policyholders at the expense of another: they alter life-insurance contracts to benefit those who would have made the switch but failed to complete the requisite paperwork, while hurting those who did not want (or would not have wanted) such a change.

There are, however, at least two ways Minnesota could help those who wanted to alter their designations without impairing the contracts of those who did not. In Virginia, which has a revocation-upon-divorce statute, a divorce decree must prominently give notice that divorce may or may not automatically revoke beneficiary designations. Va. Code § 20-111.1(E). This "conspicuous, bold print" warn-

ing must inform the divorcing couple: "If a party intends to revoke any beneficiary designation made payable to a former spouse following the annulment or divorce, the party is responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit." *Id.* This alternative approach does not impair the obligation of life-insurance contracts, but still ensures the policyholder thinks anew about who the beneficiary should be. If Minnesota wishes to nullify beneficiary designations upon divorce, it should at least warn the divorcing couple. If it had warned Sveen, he could have re-designated Melin, as she insists he promised.

Minnesota also has other, equally feasible alternatives. It could require divorce courts to confirm that divorcing couples have reviewed their life-insurance policies, if any. *See* Utah Code § 30-3-5(1)(e)(i). After that, courts could confirm that the listed beneficiary accurately reflects policyholder intent. *Id.* § 30-3-5(1)(e)(ii). Such an approach would not impair the insurance company's obligation, because it would not automatically change the beneficiary designation. But it *would* serve the purpose behind Minnesota's law, by ensuring that divorcing couples addressed any desired change to their beneficiary designations during the divorce itself. Minnesota never provided Melin and Sveen with this information.

If this Court treats laws that impair private contracts the same as those that impair public contracts—as it should—then these two more moderate approaches establish the unconstitutionality of Minnesota's current regime: it impairs the obliga-

tion of contracts even though readily available solutions would have equally served its interests without infringing anyone's contractual rights.

III. Minnesota's Law Violates the Contracts Clause as Currently Understood

Even this Court's modern Contracts Clause test precludes retroactive application of Minnesota's law. That test has three aspects: if the law in question works a "substantial impairment of a contractual relationship," it must serve "a significant and legitimate public purpose," and its "adjustment of the rights and responsibilities of contracting parties [must be] based upon reasonable conditions ... of a character appropriate to the public purpose justifying [the law's] adoption." *Allied Structural*, 438 U.S. at 244; *Energy Reserves*, 459 U.S. at 411–12. Minnesota's law fails every step.

A. The Statute Substantially Impairs Contracts

The first step in modern Contract Clause analysis is determining whether a law "operate[s] as a substantial impairment of a contractual relationship." *Allied Structural*, 438 U.S. at 244. Retroactive application of Minnesota's statute substantially impairs life-insurance contracts because it changes the key term of the contract: who gets paid. Nothing Petitioners say in response changes that fact.

1. Automatically erasing the beneficiary from a life-insurance contract is a substantial impairment

"The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the pro-

tection of private contracts." *Allied Structural*, 438 U.S. at 245. They recognized that "contracts enable individuals to order their personal and business affairs according to their particular needs and interests." *Id.* That ordering is upset not just when subsequent law completely eliminates the obligation, but also when it materially alters the terms of the parties' deal. Thus, "total destruction of contractual expectations is not necessary for a finding of substantial impairment." *Energy Reserves*, 459 U.S. at 411. Instead, when a law impairs a key contractual provision—especially one that induced the party to sign the contract—it works a substantial impairment. *Allied Structural*, 438 U.S. at 243 n.14.

Allied Structural puts these principles into practice. Allied Structural's employment contracts included a pension benefit. Ten years after the company formed the pension plan, a Minnesota law "substantially altered [the] relationships" between the employer and employees "by superimposing pension obligations upon the company conspicuously beyond those that it had voluntarily agreed to undertake." *Id.* at 240. In particular, "the company was required in 1974 to have made its contributions throughout the pre-1974 life of its plan as if employees' pension rights had vested after 10 years, instead of vesting in accord with the terms of the plan." *Id.* at 246. Thus, "a basic term of the pension contract ... was substantially modified." *Id.*

Similarly, "the contractual impairment effected" by application of a revocation-upon-divorce law to an existing life-insurance policy is "severe, virtually total." *Parsonese* v. *Midland Nat'l Ins. Co.*, 706 A.2d 814, 818 (Pa. 1998). Nobody buys life insur-

ance just so the insurance company will pay someone chosen from the phonebook; rather, "selection of a beneficiary is the entire point" of the contract. *Id.*

Both Congress and this Court have recognized as much. In the context of federal laws governing life-insurance policies, this Court has repeatedly struck down state court judgments purporting to alter the contractually chosen beneficiary. In *Wissner* v. *Wissner*, for example, an insured named his parents as beneficiaries pursuant to the National Service Life Insurance Act of 1940. 338 U.S. 655, 656–57 (1950). A California court, however, held that the proceeds were community property and awarded a portion to the policyholder's widow. This Court reversed, finding "the judgment below nullifie[d] the soldier's choice and frustrate[d] the deliberate purpose of Congress." *Id.* at 659. The Court explained that the guarantee that the policy would be "payable to the relative of his choice" was the serviceman's "guarantee of the complete and full performance of the contract to the exclusion of conflicting claims." *Id.* at 660.

This Court reaffirmed this principle in *Hillman* v. *Maretta*, 569 U.S. 483. Hillman named his then-wife, Maretta, as the beneficiary of his FEGLIA-governed policy. They divorced and Hillman remarried. After Hillman's death, Maretta collected the benefits. By state statute, however, the divorce had automatically revoked Hillman's beneficiary designation. The statute also provided that if the revocation provision were preempted, the ex-spouse would be liable in damages to the party who would

have received the proceeds had the revocation provision been effective. *Id.* at 486–90.

Everyone agreed that federal law preempted the revocation provision, *id.* at 489, but the Court held that the liability provision was also preempted: it "interfere[d] with Congress' scheme" by "direct[ing] that the proceeds actually belong to someone other than the named beneficiary," *id.* at 494. Just as in *Wissner*, the payment of the insurance benefits to the designated beneficiary was a "guarantee of the complete and full performance *of the contract*." *Id.* at 495 (emphasis added). "With that promise comes the expectation that the insurance proceeds will be paid to the named beneficiary and that the beneficiary can use them." *Id.*

The same is true here. When Sveen purchased his life-insurance policy, MetLife contractually agreed to pay death benefits to the person he designated in accordance with the policy's terms. He designated Melin. Pet. App. 2a. Under Minnesota's law at the time, divorce had no effect on such beneficiary designations. *Larsen*, 463 N.W.2d at 779. But now, Minnesota seeks to erase Melin as the beneficiary, changing the contract's key term. Minn. Stat. § 524.2-804. Retroactive application of Minnesota's statute thus "substantially impairs [the] contract[]," "fundamental[ly]" "chang[ing] the very essence" of the agreement. *Whirlpool*, 929 F.2d at 1322.

2. Petitioners' counterarguments are wrong

1. Petitioners' attempts to resist this straightforward conclusion lack merit. They first contend

that the Contracts Clause simply does not apply when a state acts in the realm of divorce. Pet. Br. 17–28. This is a notably novel claim. Petitioners insisted that "the arguments on both sides of the issue" in this case have been "fully aired." Pet. 17. Yet Petitioners made no mention of this argument until their opening merits brief *in this Court*, and cite no court that has ever discussed the argument, let alone relied upon it, in upholding a revocation-upon-divorce statute. Petitioners' sweeping, untested claim has no place in a case that could define the limits of state power. *See Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this Court is a "court of review, not first view").

Petitioners' argument also fails on the merits. As an initial matter, this Court has enforced other constitutional rights even when the states' traditional role in marriage and divorce was in play. *See, e.g.*, *Williams* v. *North Carolina*, 317 U.S. 287, 303 (1942). Why single out the Contracts Clause for disfavor?

Moreover, Petitioners' argument proves too much. If states' power over divorce rendered the Contracts Clause irrelevant, a state could impose an automatic two-year moratorium on mortgage payments upon divorce, giving each side a fresh start. Indeed, Petitioners' argument can't be right even for contracts *between the divorcing parties concerning the division of their assets*. States have long enforced prenuptial agreements. *See McKee-Johnson* v. *Johnson*, 444 N.W.2d 259, 265 (Minn. 1989), *overruled in part on other grounds by In re Kinney*, 733 N.W.2d 118 (Minn. 2007). But if Petitioners were right, states could change the rules governing such

agreements at will without violating the Contracts Clause. No one thinks that is right. The Uniform Premarital Agreement Act, for instance, applies only prospectively. Uniform Premarital Agreement Act § 12 (1983). And when Maine omitted that limitation from its own law, the state supreme court indicated that retroactive application would violate the state's similarly worded Contracts Clause. *Hoag* v. *Dick*, 799 A.2d 391, 393 (Me. 2002).

Nor do this Court's cases support Petitioners' categorical view. As Petitioners concede, Pet. Br. 24–25, *Maynard* v. *Hill* held simply that the Contracts Clause does not restrict the legislature's ability to grant a divorce. 125 U.S. 190 (1888). But that is because "marriage is not a contract within the meaning of" the Contracts Clause, *id.* at 210, and therefore a legislature is free to terminate a marriage or set the conditions on which a divorce can be granted. It does not follow that the legislature can amend other, *real* contracts between a divorcing party and a third party, or between the divorcing parties themselves.

Petitioners similarly argue that because divorce courts "have broad powers to distribute property" and can even "force a divorcing spouse to maintain his ex-spouse as a life insurance beneficiary," legislatures must be able to impair contracts, too. Pet. Br. 21. That does not follow. "It has been settled by a long line of decisions" that the Contracts Clause "is directed only against impairment by legislation and not by judgments of courts." *Tidal Oil Co.* v. *Flanagan*, 263 U.S. 444, 451 (1924) (citing nineteen cases). Like the provisions surrounding it, the Contracts Clause targets "Law[s]"—that is, legislative

enactments. U.S. Const. art. I, § 10, cl. 1; *see Rogers* v. *Tennessee*, 532 U.S. 451, 458–60 (2001) (Ex Post Facto Clause does not apply to courts).

It could hardly be otherwise. Courts have long had the "power to reform written contracts for fraud or mistake," *Ivinson* v. *Hutton*, 98 U.S. 79, 82 (1878), to consider claims that contracts were "void ab initio," *PHL Variable Ins. Co.* v. *Bank of Utah*, 780 F.3d 863 (8th Cir. 2015), and to "rescind the contract," *Brashier* v. *Gratz*, 19 U.S. (6 Wheat.) 528, 534 (1821), among other things. If judgments came within the clause's orbit, "every case decided in a state court could be brought [to the Supreme Court], where the party setting up a contract [could] allege[] that the court had taken a different view of its obligation to that which he held." *Knox* v. *Exch. Bank*, 79 U.S. (12 Wall.) 379, 383 (1871). The Framers did not displace state courts' authority over contracts in this manner.

Petitioners further suggest that revocation-upon-divorce statutes merely provide a default rule for construing divorce decrees. Pet. Br. 21. To begin, no reasonable English speaker would describe this situation—treating silence in a divorce decree as revoking beneficiary designations—as "construing" a decree rather than rewriting it. Indeed, revocation-upon-divorce statutes themselves do not speak in such terms. They purport to operate on the life-insurance contract *itself* upon the divorce, *see* Minn. Stat. § 524.2-804, subd. 2, establishing the consequences of that divorce rather than dictating the interpretation of the decree. For this reason, a legislative divorce would revoke beneficiary designa-

tions under the statute, even with no court order to construe.

Moreover, Petitioners' interpretation raises Full Faith and Credit concerns when the divorce occurred in a different state. That provision requires a state to give "Full Faith and Credit" to judgments entered by sister states' courts. U.S. Const. art. IV, § 1; *Baker* v. *Gen. Motors Corp.*, 522 U.S. 222, 233–34 (1998). States may not disregard sister-state judgments on public policy grounds. *Baker*, 522 U.S. at 233. That rule cannot be evaded by purporting to "interpret" the sister state's judgment to mean something it does not say. If, for example, a Minnesota decedent had previously been divorced in California, Petitioners' theory would have the Minnesota legislature directing the interpretation of a California judgment to revoke the decedent's beneficiary designation, even though the California judgment says no such thing—indeed, even though California law *rejects* that consequence for life-insurance contracts. Cal. Prob. Code § 5040(e).

2. Turning to the Contracts Clause analysis, Petitioners contend, Pet. Br. 29–38, that beneficiary designations should not be treated as contractual. Following the lead of the Joint Editorial Board for the Uniform Probate Code, Petitioners divide life-insurance policies into two supposed halves: (1) a contractual component, which guarantees payment, and (2) a donative transfer component, which identifies the payment's recipient. On this theory, because Minnesota's law affects only the second component, it impairs no contractual obligation. *See Joint Editorial Board Statement Regarding the Constitutionality of Changes in Default Rules as*

Applied to Pre-Existing Documents, 17 Am. College Trust & Est. Couns. 184 (1991) (*JEB Statement*).

Not even a lawyer could love that supposed distinction. "A policy of insurance is nothing more nor less than a contract wherein an insurance company, for valuable consideration, agrees to pay a sum of money ... *to a designated person* called a beneficiary." *Ping* v. *Denton*, 562 S.W.2d 314, 316 (Ky. 1978) (emphasis added). "When the proceeds of an insurance policy are made payable to a third person, a third-party beneficiary contract exists." 16 *Williston on Contracts* § 49:4 (4th ed.). The terms of the contract give the policyholder "a *contractual* right to have [the insurance company] pay death benefits to the beneficiary designated by him," and the insurance company "a corresponding *contractual* obligation to pay death benefits to the surviving beneficiary so designated." *Aetna Life Ins. Co.* v. *Schilling*, 616 N.E.2d 893, 895 (Ohio 1993) (emphasis added).

The requirement to pay the beneficiary the policyholder names is thus just as contractual as the requirement to pay the money. That is why a breach-of-contract claim against an insurance company for mistakenly paying the wrong person is viable. *See, e.g., Alexander* v. *Prudential Ins. Co.*, 292 N.W. 475, 476–77 (Mich. 1940). Sveen's own contract confirms the nature of the obligation: to pay proceeds to the beneficiary the policyholder selects in accordance with the contract. *See* Dist. Ct. Dkt. #52-2 at 3 (specifying Respondent as beneficiary); *id.* at 6, 18 (specifying the procedures required to change the beneficiary).

This Court, too, has understood the contractual nature of this obligation. The statute in *Hillman* specified that "the provisions of any contract under [this statute] which relate to the nature or extent of coverage or benefits ... shall ... preempt any law of any State ..., which relates to group life insurance to the extent that the law ... is inconsistent with the *contractual* provisions." 5 U.S.C. § 8709(d) (emphasis added). By holding that revocation-upon-divorce statutes were preempted, this Court recognized that the obligation to pay a specific beneficiary is contractual. *Hillman*, 569 U.S. at 493–95.

Given the near-universal understanding that the obligation to pay a specific person is contractual, it is no wonder Petitioners find little support for their contrary understanding. Indeed, the wellspring for this bifurcation, the JEB Statement, cited no authority for its assertion. 17 Am. College Trust & Est. Couns. at 184–85.

Finally, Petitioners' contractual-donative divide proves too much. On their view, the Contracts Clause would be no obstacle to a state statute that revokes all beneficiary designations and requires that insurance companies pay all policy proceeds to the first person who files a claim, to the state treasury, or to anyone else the legislature chooses; after all, such laws would apply only to the "donative transfer" component of the contract. Petitioners *accept* this consequence of their theory, but insist that, while it "perhaps" might raise "concerns under other constitutional provisions," it raises none "under the Contracts Clause." Reply to Pet. for Cert. 9–10. It is remarkable to claim that the *Contracts Clause* has nothing to say about chang-

ing *the key provision in a contract*, even if Petitioners think doing so might "perhaps" run afoul of some other, unnamed constitutional provision.

3. Petitioners next protest that if beneficiary designations are contractual, the insurance company's obligation is not actually to pay according to the contract, but to pay "the beneficiary under state law—whomever that beneficiary may be," or, if there is uncertainty, to interplead. Pet. Br. 30–32.

That is not what Sveen's contract says, or what any life-insurance contract says. Sveen didn't buy insurance so that MetLife would pay whomever Minnesota chose. Nor did he buy life insurance so that MetLife would interplead, as interpleader is simply the method by which an unclear obligation is determined, *see* 7 Charles Alan Wright et al., Federal Practice and Procedure § 1702 (3d ed.). Indeed, in this sense Petitioners' claim again proves too broad: if the insurance company need only pay in accordance with state law or interplead, the state could designate *itself* as the beneficiary without any Contracts Clause scrutiny.

Petitioners' claim must therefore be wrong. And it is easy to see how. Contracts "long have been regarded as including not only the express terms but also the ... state law pertaining to interpretation and enforcement." *U.S. Trust*, 431 U.S. at 19–20 n.17. But it is only "the laws which subsist *at the time and place of the making of a contract* ... [that] enter into and form a part of it." *Id.* at 20 n.17 (emphasis added). In other words, even if MetLife's duty were to pay in accordance with state law, the applicable law is the law in place when Sveen entered

the contract. Under that law, Melin gets the money. *See Larsen*, 463 N.W.2d at 779. By changing—indeed, reversing—that rule, the revocation-upon-divorce statute impairs the contract.

Petitioners' policy reasons for treating the insurance company's contractual obligations as non-contractual, Pet. Br. 32–38, are equally unpersuasive. They suggest there is no reason to treat beneficiary designations in contracts differently than those in wills. But even Petitioners concede that "an insurance policy is a contract under the Contracts Clause, and a will is not." Pet. Br. 33. There is nothing strange about treating a contract as a contract and a will as a will. So too for revocable trusts, *see* Pet. Br. 34–35: if they are contracts, then there is no reason to treat them like wills for Contracts Clause purposes.

Moreover, while Petitioners may believe there is no *functional* reason to treat beneficiary designations in different instruments differently, twenty-three states and the federal government disagree. This makes sense; life insurance serves different purposes than wills, and many former spouses want to retain their life-insurance beneficiary designations after divorce. *Supra* 11–13. Indeed, California and Missouri *have* nonprobate revocation statutes, but expressly exempt life insurance from them. Cal. Prob. Code § 5040(e); Mo. Rev. Stat. § 461.073(6).

Petitioners also argue that it would violate "principles of federalism" to apply the Contracts Clause here because doing so would prevent states from making other changes to their succession laws. Pet.

Br. 35–38. Not so. Under current law, a substantial impairment of contracts does not end the inquiry. If reforms to slayer statutes, adoption statutes, and statutory share statutes are as critical as Petitioners suggest, they will survive Contracts Clause challenges.

Indeed, these laws are all clearly tied to legitimate public interests. Slayer statutes further the public policy of not awarding a killer or abuser money. *See Prudential Ins. Co.* v. *Tull*, 690 F.2d 848, 849 (4th Cir. 1982) ("Federal law recognizes that the beneficiary's claim is barred by the equitable defense: 'No person should be permitted to profit from his own wrong.'"). Adoption statutes reflect the policy judgment that adopted children should be treated the same as biological ones. And statutory share laws reflect the policy judgment that widows and widowers should be taken care of upon their spouse's death. These sorts of laws are thus unlike revocation-upon-divorce statutes, whose narrow purpose is to effectuate an unexpressed intent of a party. Petitioners' examples might prevail at the second and third step of Contracts Clause analysis. *But see Bird Anderson* v. *BNY Mellon, N.A.*, 974 N.E.2d 21, 32–33 (Mass. 2012) (striking down adopted children statute as retroactively applied); *Matter of Estate of Gab*, 364 N.W.2d 924, 926 (S.D. 1985) ("To give the [statutory share law] any force retroactively would [unconstitutionally] impair the postnuptial agreement between decedent and appellant.").

In any event, that Petitioners have identified statutes that may justifiably impair contractual obligations does not change the fact of the impair-

ment. "Whether or not the protection of contract rights comports with current views of wise public policy, the Contract Clause remains a part of our written Constitution." *U.S. Trust*, 431 U.S. at 16. When a state changes the key term of a life-insurance policy, it impairs a contractual obligation.

4. Petitioners' supposedly independent argument that revocation-upon-divorce statutes merely construe divorce as an exercise of contractual rights, Pet. Br. 39–41, suffers from a similar flaw: it misapprehends the nature of MetLife's obligation. Petitioners correctly observe that where the policyholder changes the beneficiary, he is exercising a contractual right, not impairing an obligation. Pet. Br. 39–40. That is because the relevant obligation is to pay the proceeds to the beneficiary designated by the policyholder in accordance with the policy.

It is irrelevant that courts treat some actions as sufficient to change a beneficiary designation even absent strict compliance with contractual terms. For example, Minnesota courts have long allowed a procedurally improper beneficiary change where "there was intent to change the beneficiary by the insured" and "the insured acted affirmatively or otherwise did substantially all possible to show intention whether or not she complied with policy change of beneficiary provisions." *Larsen*, 463 N.W.2d at 780 (citing *Brown* v. *Agin*, 109 N.W.2d 147, 151 (Minn. 1961)). Petitioners suggest that "if a State enacted legislation codifying" such a rule, "the rule would not be retroactively *impairing* the policy." Pet. Br. 40.

If Petitioners mean to argue that legislatures may formalize existing doctrines, Respondent agrees; codifying a rule does not retroactively change *anything*. But if Petitioners mean to suggest that legislatures have free rein to provide "interpretive" guidance regardless of prior law, they must be mistaken. The "contemporaneous state law pertaining to interpretation enter[s] into and form[s] a part of" each contract as if it were "expressly referred to or incorporated in its terms." *U.S. Trust*, 431 U.S. at 19–20 n.17. By reversing the common-law rule—that divorce did *not* automatically revoke—Minnesota altered Sveen's contract just as surely as it would have had it passed a law "interpreting" every reference to "dollars" in that contract to mean Canadian ones. Thus, while states may prospectively treat divorce as presumptively revoking beneficiary designations, they may not impair existing obligations by changing the state law incorporated into pre-existing contracts.

5. Petitioners assert that even if revocation-upon-divorce statutes impair contractual obligations, they do not do so substantially because they are just default rules. Pet. Br. 44–49. Petitioners suggest that several cases upholding real-estate recording statutes or other similar laws establish a general rule that "a statutory requirement of filing a document does not unconstitutionally impair contractual obligations." Pet. Br. 47.

Petitioners' rule is sweeping. If Petitioners were right, revocation-upon-divorce statutes could reach even *irrevocable* beneficiary designations without Contracts Clause concern. States could require policyholders to annually file a document indicating

that they continue to want proceeds to be paid to the named beneficiary, rather than the state general fund or the governor's brother. Indeed, on Petitioners' view, the Contracts Clause would have nothing to say if a state passed a law allowing landlords to evict any tenant who failed to file a new, required form with the state. That is not the law.

In general, "courts do not presume acquiescence in the loss of fundamental rights." *Knox* v. *Serv. Emps. Int'l Union*, 567 U.S. 298, 312 (2012). That is why context always matters in determining whether a change constitutes a substantial impairment. A law like Minnesota's impairs a contract by overriding an express contractual term. It does not make the impairment any less substantial if the law affords the contracting parties a theoretical—but impracticable—way to restore their original contract rights.

As an initial matter, when a contract expressly provides the method by which a contractual right may be exercised, a state law altering that procedure generally impairs contractual obligations. For example, in *Seibert* v. *United States ex rel. Lewis*, a bond contract provided that taxes to pay bondholders would be collected the same way as other county taxes. 122 U.S. 284, 296–97 (1887). The legislature later passed a law requiring bondholders to initiate a suit in federal court and meet a number of other requirements to collect their payments, while allowing county taxes to be collected in a state-court action with far fewer requirements. Even though bondholders still had a way to collect payments owed to them, this Court found the law un-

constitutional because the contract provided the specific method by which the bond was to be paid; state law to the contrary thus impaired the contract. *Id.* at 297–98.

Moreover, giving some parties a mechanism for overcoming the legislature's change while leaving others in the lurch does not make the impairment insubstantial. For example, in *McGahey* v. *Virginia*, the Court struck down a law requiring bondholders with detachable bond coupons to produce the original bond from which the coupons were cut, or else lose the right to payment. 135 U.S. 685 (1890). Though there were probably coupon holders who could produce the original bond papers, the Court found that "in many cases" it was "impossible" to fulfill this condition. *Id.* at 694. Thus, the condition was "unreasonable," and the law had to go. *Id.*

Retroactive application of revocation-upon-divorce statutes runs headlong into these limits on state power. First, Sveen's contract (like every life-insurance contract) specifically provides the method by which a beneficiary may be designated and changed. Pet. App. 9a–10a. Divorce is *not* among them—under either the contract or the law in effect when Sveen purchased it. *See Larsen*, 463 N.W.2d at 779. Thus, as in *Seibert*, Minnesota's revocation-upon-divorce statute impairs Sveen's contract.

Second, while Minnesota's law allows a divorcé to restore the original beneficiary, the entire *premise* of Minnesota's law is that policyholders pay no attention to their beneficiary designations. "Having determined that some individuals are inattentive regarding their insurance policies, the ... legisla-

ture can hardly expect these same individuals to be cognizant of changes in the law respecting those policies." *Whirlpool*, 929 F.2d at 1323. Thus, in practice, the possibility of re-designating the original beneficiary is illusory for this class of policyholders, because many divorcés—on Petitioners' own assumption—are unaware of the need to update beneficiaries in the first place. Absent notice of Minnesota's re-designation of beneficiaries, expecting these inattentive divorcés to undo the impairment of their contractual rights is demanding the impossible. For them, Minnesota's so-called default rule "actually function[s] as [an] effective mandate[]." Ryan Bubb & Richard H. Pildes, *How Behavioral Economics Trims Its Sails and Why*, 127 Harv. L. Rev. 1593, 1616 (2014). This case is thus akin to *McGahey*: Some coupon holders may have been able to find the original bond paper, but given the impracticality of that requirement for most, it impaired the contract. So too here.

The context in Petitioners' cases was quite different. In one, for instance, the party alleging an impairment had "actual notice," making it easy for him to comply with the requirement. *Gilfillan* v. *Union Canal Co. of Pennsylvania*, 109 U.S. 401, 402 (1883). Others arose in fields full of filing requirements designed to protect third parties, such that requiring notice could be described as "eminently just to everybody." *Vance* v. *Vance*, 108 U.S. 514, 518 (1883).[2] Indeed, in the most common con-

[2] *See also Jackson ex dem. Hart* v. *Lamphire*, 28 U.S. (3 Pet.) 280 (1830) (real-property recording statute); *Curtis* v. *Whitney*, 80 U.S. (13 Wall.) 68 (1871) (notice from purchaser at tax sale to

text—recording and notice requirements for real-property transactions—the laws did not even operate on the contract itself (let alone alter an express term), but rather imposed a consequence for failing to record or give notice, because there is no other way to run a real-estate system. These cases contrast with Minnesota's direct alteration of policyholders' rights.

6. Petitioners observe that policyholders do not buy life insurance in reliance on a plan to divorce and forget to change their beneficiary designation. Pet. Br. 50–54. That, however, describes the reliance at far too specific a level. Policyholders *do* buy life insurance in reliance on the maintenance of well-established rules determining who will get the money, especially those provided in the contract. Retroactively enforcing the new law would "interfere[] with the parties' expectations at the time of contracting," Pet. Br. 50, and adhering to the original bargain would not create "unforeseen advantages or burdens on a contracting party." *El Paso*, 379 U.S. at 515.

In this vein, Petitioners speculate about what Sveen and others might want, suggesting that he

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(continued...)

present possessor); *Louisiana* v. *New Orleans*, 102 U.S. 203, 206 (1880) (judgment-recording statute "tending to restrain and check the reckless levy of taxes, and affording in a compact form a correct knowledge of the city's liabilities"); *Texaco, Inc.* v. *Short*, 454 U.S. 516 (1982) (reverting mineral-interest ownership to the current surface owner where the interest has not been used or claimed in twenty years).

may have known (or been told by a lawyer) about the revocation statute before his divorce. Pet. Br. 53–54. Petitioners never explain why Sveen or his lawyer would have known about Minnesota's new law, but not the Eighth Circuit's decision limiting Oklahoma's materially identical statute to prospective effect. *See Whirlpool*, 929 F.2d at 1322–23. Moreover, there are multiple cases in which policyholders sought to keep their ex-spouse as their beneficiary in the presence of a revocation-upon-divorce statute, and were told that they did not need to take any steps to re-designate the ex-spouse. *Jenson*, 2012 WL 848158, at *1; *State Farm Life Ins. Co.* v. *Davis*, 2008 WL 2326323, at *1 (D. Alaska June 3, 2008). Bad advice runs both ways.

B. Retroactive Application of Minnesota's Statute Does Not Further a Significant and Legitimate Purpose

To justify a law impairing contracts, there must be evidence (not conjecture) that the law was crafted to remedy a broad social problem, and the good the law does must outweigh its harms. Petitioners cannot make those showings here.

1. Any permissible impairment of contractual obligations must serve a "significant and legitimate public purpose." *Energy Reserves*, 459 U.S. at 411. Contrary to Petitioners' claims, Pet. Br. 56–57, to meet this test they must show more than that Minnesota's law "more likely than not" solves a problem. Instead, there must be "*evidence* of a significant and legitimate public purpose underlying" the law; "post hoc rationalization" does not suffice. *Equip. Mfrs.*, 300 F.3d at 860, 862 (emphasis add-

ed); *see also Allied Structural*, 438 U.S. at 247–49 (limiting the inquiry to evidence "in the record"). As this Court has made clear, the Contracts Clause analysis is *not* rational basis review. *See Pension Benefit Guar. Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 732–33 & n.9 (1984). It is not enough to pontificate justifications for the law.

In addition, the interest that the law furthers must be a "broad societal" one, not just the interest of a "narrow class." *Allied Structural*, 438 U.S. at 249. A law that purportedly solves a small problem or panders to a niche group will not be sufficient to justify impairing contracts. *See id.*

Finally, the test is a balance: any benefits of the law must be weighed against its costs. "The severity of the impairment measures the height of the hurdle the state legislation must clear." *Id.* at 248.

2. "There is no showing in the record before [the Court] that this severe disruption of contractual expectations was necessary to meet an important general social problem." *Id.* at 247. Petitioners first claim that Minnesota's revocation-upon-divorce statute more accurately reflects the intent of policyholders upon divorce. Pet. Br. 56–57. Whatever intuitive appeal this explanation has, Petitioners point to no evidence that this intent problem exists, or that this was the aim of the Minnesota legislature. *See id.* "There is no statement of legislative intent or any other legislative history from which to directly ascertain the purpose of the Act." *Equip. Mfrs.*, 300 F.3d at 860. All Petitioners offer are hypotheticals for the wisdom of Minnesota's law. They claim the "legislature made the empirical determination that,

in the mine run of cases, the statute advances the policyholder's intent." Pet. Br. 57. But Petitioners provide no evidence that this belief is empirically true, much less that the legislature made such a determination. "Without evidence of a significant and legitimate public purpose underlying" the law, it "is void as applied" retroactively. *Equip. Mfrs.*, 300 F.3d at 860.

If anything, the evidence cuts against Petitioners' claim. The only quasi-legislative history Petitioners offer is a statement from the Uniform Probate Code (UPC), which served as the model for Minnesota's law. According to the drafters of the UPC, "the theory of this section," UPC § 2-804 cmt, is that people were increasingly using "will substitutes, such as revocable trusts," and since states already treated divorce as revoking beneficiary status in a will, the same treatment should be extended to "all of the arrangements that are functionally equivalent to wills," Lawrence W. Waggoner, *Spousal Rights in Our Multiple-Marriage Society: The Revised Uniform Probate Code*, 26 Real Prop. Prob. & Tr. J. 683, 690, 692 (1992). That hardly matches up with Petitioners' chief justification for the law.

In addition, as noted above, "there are often valid reasons why an insured would want a former spouse to receive his insurance policy proceeds." *Hughes*, 900 S.W.2d at 607. Whether to provide for the couple's children, serve as an investment, or serve as collateral for other obligations, policyholders may well wish to leave their beneficiary designations unchanged. *Supra* 11–13. To vitiate these policyholders' intent in the service of furthering a hypothetical policyholder's intent is hardly the

stuff of a legitimate (let alone significant) state interest. Perhaps that is why nearly half the states and the federal government have not adopted a revocation-upon-divorce statute for life-insurance policies.

3. Even if Petitioners could muster evidence that there was a problem when it came to life insurance and that Minnesota was trying to solve that problem with its law, the interest would still be insufficient to justify the impairment at issue. For one, "an impairment is not a reasonable one if the problem sought to be resolved by an impairment of a contract existed at the time the contractual obligation was incurred." *Massachusetts Cmty. College Council* v. *Commonwealth*, 649 N.E.2d 708, 713 (Mass. 1995) (citing *U.S. Trust Co.*, 431 U.S. at 29). There is no evidence that the purported problem arose after Sveen signed his contract. In fact, by 1990, several years prior, the Uniform Probate Code already recommended that states enact revocation-upon-divorce statutes for life insurance. Pet. Br. 7.

Further, there is a difference between laws "limited in effect to contractual obligations or remedies" and those that "advance a broad societal interest." *Exxon*, 462 U.S. at 191. The former are subject to far more searching inquiry. *Id.* Minnesota's revocation-upon-divorce statute is clearly not general social legislation that applies to individuals "regardless of whether they happened to be parties to ... contracts." *Id.* Instead it applies *only* to contracts, and only to a narrow class of contracts at that. The law does not apply where the "express terms" of a "court order" or a "contract relating to the division

of the marital property" addresses the issue. Minn. Stat. § 524.2-804, subd. 1. That of course covers the mine run of cases because "life insurance often assumes an important role in a marital settlement agreement or divorce decree." Danielle E. Miller, *Estate Tax Impact of Life Insurance Required by Divorce*, 43 Est. Plan. 19, 19 (2016). The law also does not apply to policies subject to federal regulation, *Egelhoff*, 532 U.S. at 150 (ERISA preempts such statutes); *Hillman*, 569 U.S. at 497 (FEGLIA does too), which account for a substantial number of policies, *see* American Council of Life Insurers, Life Insurers Fact Book 2017, at 72 table 7.9. And of course, the law applies only where the policyholder does not designate a beneficiary after his divorce.

What is left is an exceedingly narrow class of contracts. Minnesota's law is thus not solving an "important general social problem." *Allied Structural*, 438 U.S. at 247. Rather it is "limited in effect to contractual obligations or remedies" of a small set of contracts. *Exxon*, 462 U.S. at 191.

Examining that narrow class of contracts further shows why the law does not serve a significant public purpose. The supposed benefit of the law, effectuating intent, obviously cuts both ways. For every inattentive policyholder who wishes to cut off an ex-spouse, there may well be an inattentive policyholder who does not. The law's other "benefits" are equally illusory. Petitioners suggest that "even for attentive spouses, revocation-upon-divorce statutes save them the time and paperwork of revoking their beneficiary designations." Pet. Br. 57. But in contrast to the paradoxical requirement that inat-

tentive spouses re-designate—on pain of benefits going to someone else—the burden on attentive spouses is trivial. Petitioners also opine that the law "ensures parallel treatment of beneficiary designations in wills and insurance policies." Pet. Br. 58. But as explained, people choose different instruments for different reasons, and symmetry is not obviously desirable here. Petitioners finally claim that these statutes "avoid litigation on whether ambiguous divorce decrees revoke beneficiary designations." Pet. Br. 58. But these statutes do not "avoid litigation," they just shift it to the question of whether there is sufficient evidence to overcome the revocation. *See, e.g.*, *Jenson*, 2012 WL 848158; *Davis*, 2008 WL 2326323. Indeed, this case contained a dispute over whether Melin had an oral contract with Sveen to leave beneficiary designations unchanged. *See* Pet. App. 10a, 15a. The supposed benefits of this law simply cannot overcome the drastic impairment it causes on the narrow class of contracts the law affects.

Further confirming that the balance weighs against Minnesota's law is that "a less drastic modification would have" served Minnesota's goal of correcting the oversight of some divorcés. *U.S. Trust*, 431 U.S. at 30. As discussed, *supra* 31–32, Virginia law requires all divorce decrees to prominently give notice that divorce may or may not automatically revoke life-insurance-beneficiary designations. Another approach would be to require divorce courts to confirm that the divorcing couple has reviewed their life-insurance policies. These approaches—which Minnesota easily could have

deployed—do not impair contracts but still serve the goal of effectuating the policyholder's intent.

3. Finally, if Minnesota's law did serve a significant purpose, one would expect Minnesota to say so. But Minnesota has not entered an appearance, let alone filed a brief defending its statute—not in the district court, not in the Eighth Circuit, and not here.

Minnesota is not the only state that views retroactive application of such statutes as a trifling matter. Even though Arizona's law is imperiled by a case pending before this Court, *Lazar* v. *Kroncke*, No. 17-521 (filed Oct. 3, 2017), it did not file an amicus brief in this case. In fact, none of the 27 states whose laws may be declared unconstitutional as applied retroactively thought them important enough to defend in this case. The absolute lack of state interest makes it difficult to accept that these laws serve a significant purpose.

C. Retroactive Application of Minnesota's Statute Is Neither Reasonable nor Appropriate

Application of Minnesota's law to settled contracts is neither "reasonable" nor "of a character appropriate to the public purpose justifying its adoption." *Allied Structural*, 438 U.S. at 244. It may be that some individuals would prefer that upon divorce their ex-spouse be automatically removed as a beneficiary to a life-insurance policy, but this is "certainly not a universal truth." *Whirlpool*, 929 F.2d at 1323; *see also* Brief for the United States as Amicus Curiae, *Hillman*, 2013 WL 1326956, at *28. As explained above, "there are of-

ten valid reasons why an insured would want a former spouse to receive his insurance policy proceeds." *Hughes*, 900 S.W.2d at 607.

That may be why almost half of the fifty states have declined to do so, and why Congress has declined to implement a similar revocation-upon-divorce rule for policies covered by ERISA or FEGLIA. The best way to discern the decedent's intent remains the decedent's explicit designation of a beneficiary. By ignoring that reality, retroactive application of Minnesota's revocation-upon-divorce statute is not "based upon reasonable conditions" nor is it "of a character appropriate to the public purpose justifying the legislation's adoption." *Energy Reserves*, 459 U.S. at 411.

Minnesota's law is unreasonable for a second reason. As discussed, the law's premise is that people fail to realize they need to revisit their life-insurance policies after they divorce. But that assumption suggests those same individuals will not know that the state law governing the insurance policy changed. Those inattentive individuals that the state is trying to help may be relying on the law they understood when they signed the life-insurance contract, or they may just want to keep their former spouse as their beneficiary but have no idea that state law seeks to thwart that outcome. *See Whirlpool*, 929 F.2d at 1323.

Finally, confirming the unreasonableness of applying Minnesota's statute retroactively is that "a less drastic modification would have" served Minnesota's goal of correcting the oversight of some ex-spouses. *U.S. Trust*, 431 U.S. at 30. Minnesota

could easily require divorce decrees to prominently give notice that divorce may or may not automatically revoke life-insurance beneficiary designations. *Supra* 31–32. This alternative approach does not impair contracts but still serves the legislature's goal of ensuring the policyholder thinks anew about who the beneficiary should be.

* * *

This Court used to enforce the Contracts Clause according to its terms; for nearly 150 years, it recognized the Framers' "great principle, that contracts should be inviolable." *Sturges*, 17 U.S. (4 Wheat.) at 206 (Marshall, C.J.).

It should do so again. Under the original understanding of the Contracts Clause—devoid of balancing—because Minnesota's law impairs contractual obligations, it cannot be applied retroactively. Even under a more moderate course correction—treating laws affecting private contracts on par with laws affecting public contracts—Minnesota's law fails, as Minnesota could easily achieve its objectives without impairing contracts.

But even under this Court's current approach, "this Minnesota law simply does not possess the attributes of those state laws that in the past have survived challenge under the Contract Clause of the Constitution." *Allied Structural*, 438 U.S. at 250. "If the Contract Clause means anything at all, it means that Minnesota could not constitutionally do what it tried to do ... in this case." *Id.* at 250–51.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

ROBERT J. LANGE
R.J. LANGE
LANGE LAW FIRM, P.A.
7201 W. 78th St. Suite 207
Bloomington, MN 55439

SHAY DVORETZKY
Counsel of Record
JEFFREY R. JOHNSON
ANDREW J. M. BENTZ
MATTHEW J. RUBENSTEIN
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939
sdvoretzky@jonesday.com

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